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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER TO INITIATE DISCUSSIONS WITH INTERESTED PARTIES ON ALTERNATIVE RATE PLAN PROPOSALS	**CASE NO. PAC-E-13-04** **COMMUNITY ACTION PARTNERSHIP ASSOCIATION OF IDAHO'S BRIEF IN SUPPORT OF MOTION TO COMPEL**

The Community Action Partnership Association of Idaho ("CAPAI") submits this brief in support of its Motion to Compel filed with this Commission pursuant to Rules 221-225 of the Commission's Rules of Procedure, IDAPA 31.01.01.000 (hereinafter generally referred to as "Procedural Rules"), and Rules 26 and 37 of the Idaho Rules of Civil Procedure.

I. INTRODUCTION

Though this motion is limited to a request for an Order compelling responses to discovery propounded by CAPAI to PacifiCorp, the highly unusual nature of this unprecedented filing exacerbates the consequences of PacifiCorp's refusal to respond to legitimate discovery and constitutes a substantial diminution of CAPAI's rights as a party. Thus, a detailed background of the nature and procedural history of this case is essential to a full understanding of the motion.

II. BACKGROUND

A. PacifiCorp's Initial Pleadings.

1. Notice of Intent to File a General Rate Case.

This case was formally initiated by PacifiCorp on March 1, 2013 through the filing of two documents: 1) a Notice of Intent to File a General Rate Case, and; 2) an Application. The Notice of Intent is a single page letter with a subject line that reads: "Re: Notice of Intent to File a General Rate Case." *[Emphasis Added]* The body of the letter starts as follows: "Pursuant to the Idaho Public Utilities Commission's Rule of Procedure 122, PacifiCorp dba Rocky Mountain Power hereby files Notice of Intent to file a general rate case. *[Emphasis Added]*. This Notice is being filed at least 60 days before the Company intends to file a general rate case." *[Emphasis Added]*. Sixty days from March 1, 2013 would actually be April 30, 2013. PacifiCorp notes in its Notice of Intent, however, that:

> This Notice is being filed at least 60 days before the Company intends to file a general rate case. Pursuant to Order No. 32432, resulting from a stipulation between parties in Case No. PAC-E-11-12, the Company will not file a general rate case before May 31, 2013, any rate change resulting from the case will not be effective before January 1, 2014.

[Emphasis Added].

Rule 122 of the Commission's Procedural Rules, IDAPA 31.01.01.122 requires all utilities with gross annual revenues from retail customers in Idaho exceeding three million dollars ($3,000,000.00) to file a notice of intent "at least sixty (60) days before filing a general rate case." The rule further provides that the if the application itself is not filed within 120 days after filing the Notice of Intent, the Notice will be considered withdrawn, unless properly supplemented. PacifiCorp has never supplemented its Notice of Intent in the manner required by Rule 122 for the Notice to remain valid beyond 120 days.

PacifiCorp's Notice of Intent is unique in many respects. Though the first paragraph is relatively routine and appears to satisfy the requirements of Procedural Rule 122 for a general rate case, the second paragraph of the Notice takes an unusual and unprecedented turn by which the Company seeks immediate and extraordinary procedural and substantive relief from the Commission:

> "The Company is filing an Application to respectfully requesting [*sic*] that the Commission open a docket, Notice the Application, and establish an intervention deadline for interested persons to intervene with the intent to participate in discussions that may lead to an agreement on an alternative rate plan solution, other than the Company filing a general rate case."

[Emphasis Added].

Thus, PacifiCorp's Notice of Intent explicitly and repeatedly states the Company's intention to file a general rate case and that said filing cannot occur prior to May 31, 2013, but then takes an unexpected turn and seeks immediate processing of the accompanying Application for what seem to be other purposes. For numerous reasons, Notices of Intent to File a General Rate Case are not accompanied by Applications and do not seek immediate procedural relief from the Commission. PacifiCorp, nonetheless, requested the Commission to immediately "Notice the Application" accompanying the Notice of Intent and initiate a proceeding whose stated purpose is actually an attempt to avoid filing a general rate case, an obvious contradiction with the stated and formal purpose of a Notice of Intent.

PacifiCorp also requested that the Commission establish an intervention deadline specifically for those who have "the intent to participate in discussions that may lead" to the avoidance of a general rate case. Ordinarily, intervention deadlines established by the Commission do not specify what an intervenor's "intent" must be in order to intervene. The Procedural Rules contain no specific "intent" for intervenors so long as the intervention petition

contains all of the elements set forth in Procedural Rule 72. Regardless, the Notice of Intent in this case seems to be seeking two contradictory things: a general rate case and a case limited to the objective of discussing how to avoid a general rate case.

One could imagine any number of scenarios of how this case, once noticed by the Commission, would turn out. One obvious possibility is that the parties might have drafted a list of possible alternatives to a general rate case as the very wording of the initial filing and the Commission's Notice of Application suggest. That list could then have been provided to the Commission and the parties could have proposed a particular procedure by which to handle the Application for a general rate case that PacifiCorp would then file no sooner than May 31, 2013.

The last thing that CAPAI envisioned, however, was that the parties would simply and unilaterally disregard all Procedural Rules pertaining to general rate cases, not draft any particular procedural alternative for the Commission's consideration, and negotiate the confidential settlement of a general rate increase that didn't and couldn't lawfully even exist yet. It is hard to imagine that this is what the Commission envisioned. CAPAI is the only party not to execute the settlement stipulation and has made clear its deep concerns about the potential, negative repercussions of processing a case in this manner unless and until such time as the appropriate legislative changes are made to the Idaho Code and/or proper administrative rulemaking is completed altering the existing procedure prescribed for general rate cases.

Paragraph 4 of PacifiCorp's Application states that, prior to the filing, the Company had already "met informally with the majority of its customer representatives including Commission Staff, PacifiCorp Idaho Industrial Customers, Idaho Irrigation Pumpers Association and Monsanto to discuss the concepts of a rate plan that could possibly avoid the necessity...of prosecuting a general rate case." *Application at p. 2.* CAPAI was not invited to join in these pre-

filing discussions and had no idea that they had even taken place until after March 12, 2013, when the Commission issued a Notice of Application and Order No. 32761. In fact, it was not until April 19, 2013, during the first settlement conference, that CAPAI became aware of the details of the controversial proceeding that was being proposed.

2. Application of Rocky Mountain Power

(a) Application is Premature, Confusing and Invalid

PacifiCorp's March 1, 2013 filing is further muddled by the inclusion of the "Application of Rocky Mountain Power" with the Notice of Intent, the former being every bit as peculiar and unprecedented as the latter. The confusion begins with the Application's caption which characterizes the case as: "In the matter of the application of Rocky Mountain Power to initiate discussions with interested parties on alternative rate plan proposals." This is quite different from the typical caption used in general rate case applications.

Rather than outline the details of the general rate increase sought by the Company, as is required by Rule 121, the Application actually discusses why a general rate case cannot even be filed until May 31, 2013. The Application concludes with the following highly unusual prayer for relief :

> WHEREFORE, Rocky Mountain Power respectfully requests that the Commission open and notice a docket and set an intervention deadline that would formally notify interested parties of Rocky Mountain Power's intent to engage in settlement discussions, pursuant to IPUC Rule 273,[1] with the desire to reach agreement on terms that would allow the Company to avoid filing a general rate case in 2013 and extend the existing rate plan for an additional period of time.

Application at pp. 2-3.

[1] A rule stating that the Commission may "inquire of the parties" as to whether settlement in an ongoing proceeding are in progress or contemplated and/or inviting settlement of certain issues or the entirety of a pending case

The preceding request is improper on its face because it requests that the Commission limit what is stated to be a general rate case to "settlement discussions" involving only those who have the "intent to engage" in such discussions "with the desire to reach agreement on terms that would allow the Company to avoid filing a general rate case in 2013." An interested person who wished to participate in any general rate case that might be conducted but who was not interested in devising ways to deviate from existing law and policy regarding general rate case procedure, would not even seem to be welcome by virtue of the notice language requested by PacifiCorp. This illustrates the potential for confusion and an unwitting waiver of rights by parties who might not have intervened on the basis that the case at hand is a precursor to, or something other than, the actual rate case which would presumably be filed roughly three months later.

The simultaneous filing of an Application with a Notice of Intent is patently counterproductive and in violation of Procedural Rules. One of the primary purposes of a Notice of Intent is to give the public and potential intervenors advance notice of a general rate case which typically involves a considerable investment of resources and preparation. It makes no sense, therefore, to file an application simultaneously with the Notice of Intent when that application might, as it did in this case, result in a proposed general rate increase prior to the expiration of at least 60 days time.

The atypical procedure adopted in this case is troubling because there is no way of knowing to what extent the public was confused by this filing and whether parties who might otherwise have intervened but chose not to believing that this was something other than a rate case if, for no other reason, than the caption of the Application itself, and the wording of the Notice of Intent and Application which could be interpreted in numerous different ways. Indeed, CAPAI itself was uncertain whether a rate increase could lawfully be permitted without a proper

application filed no sooner than May 31, 2013. To be cautious, CAPAI petitioned to intervene in this case, even though it had no "intent" to seek an alternative to a general rate case and even though the filing seemed to be a violation of Procedural Rules, simply out of fear that failure to intervene would likely be deemed a failure to intervene in the general rate case that PacifiCorp explicitly implied would be filed no sooner than May 31, 2013. In fact, CAPAI's concerns were well-founded. Had it not intervened when it did, it would have had no say whatsoever in the outcome of this case. As it is, even though it intervened, CAPAI's full parties' rights were diminished by virtue of the inappropriate procedure of this case combined with PacifiCorp's refusal to respond to discovery requests.

Finally, CAPAI anticipates that PacifiCorp will argue that, as characterized in the Application's Prayer for Relief, the settlement stipulation in this case does not constitute a general rate increase but, rather, an "extension of an existing rate plan for an additional period of time." *Application at pp. 2-3.* The very terms of the settlement stipulation being proposed refute any such contention. For example, paragraph 2 of the stipulation states: "[t]he following Stipulation represents an agreement between the Parties on a new two year rate plan." *Stipulation at p.2 [Emphasis Added].* Furthermore, paragraph 7 of the Stipulation begins: "The Parties agree that base revenue requirement for all schedules will be increased by the uniform percentage amount of 0.77%." At its core, this Stipulation is no different than any other general rate case increase negotiated but processed in compliance with the Procedural Rules applicable to general rate cases.

(b) Failure to File Proper Application Results in Dismissal of Case.

Procedural Rule 122 provides, in part:

> If the general rate case [i.e., "Rule 121 application"] described in the notice is not filed within one-hundred twenty (120) days after filing of

> the notice of intent to file a general rate case, by operation of this rule a notice of intent to file a general rate case will be considered withdrawn unless it is supplemented with a written statement that the utility still intends to file a general rate case of the kind described in its notice of intent to file a general rate case.

Emphasis Added.

To this day, PacifiCorp has never actually filed what constitutes an application for a general rate case in compliance with the numerous requirements of Procedural Rule 121 including, among other things, the specific details of the proposed rate increase, proposed tariffs with the necessary changes marked on the existing tariff, justification of the rate increase in the form of testimony and exhibits, as well as financial statements, cost of capital and appropriate cost of service studies and, if the utility in question operates in more than one jurisdiction as PacifiCorp does, a jurisdictional separation of all investments, revenues and expenses allocated or assigned in whole or in part to Idaho intrastate utility business regulated by this Commission showing allocations or assignments to Idaho, and so on.

Because more than 120 days have passed since the filing of the Notice of Intent filed on March 1, 2013 and no general rate case application, as defined by Procedural Rule 121, among others, has yet been filed, pursuant to Rule 122, therefore, PacifiCorp's filing is technically deemed withdrawn and the proposed settlement stipulation is legally null and void.

(c) Application Violated 2011 Settlement Stipulation

In addition to the inappropriate timing or lack of actual filing of the Application, by virtue of Procedural Rule 122, and the fact that the case was deemed withdrawn, the March 1 Application also violated the 2011 PacifiCorp settlement. That Stipulation, filed October 18, 2011, provides in part:

> 19. The Parties agree that in recognition of the two-year rate plan covered by this Stipulation, Rocky Mountain Power will not file another

> general rate case before May 31, 2013, with new rates not effective prior to January 1, 2014,

Stipulation at p. 6.

Regardless of how PacifiCorp's Application in this case is worded or characterized, it led to the immediate processing of the application, including the conducting of discovery and two settlement conferences, and ended in an agreement and proposal, prior to May 31, 2013, to increase rates. Though the settlement stipulation was not filed until June 3, 2013, the stipulation was obviously not negotiated, formalized in a written stipulation, circulated for comments and revised, and executed by all parties in the span of three days. Thus, it had largely been resolved prior to May 31, 2013 and, therefore, constitutes an effective violation of the settlement agreement executed in PacifiCorp's 2011 general rate case.

B. Procedural Abnormalities of Case

1. PacifiCorp Filing Misleading and Notice Issued by Commission Was Not Complied With.

On March 12, 2013, only eleven days after the Company's filing, the Commission issued a Notice of Application and Order No. 32761 commencing the processing of PacifiCorp's Application. The Commission's Notice of Application states:

> Based upon our review of the Application and Staff's recommendation, the Commission finds it reasonable to initiate a case so that parties can engage in settlement discussions <u>in an effort to avoid or narrow issues in a general rate case</u>.

Notice of Application at p. 2 [Emphasis Added].

Though CAPAI does not presume to know what the Commission's intentions were regarding the language contained in the Notice of Application and Order 32761, the Notice does seem to state on its face that, while the discussions between the parties might "avoid" or

"narrow" issues, it seems to suggest that a general rate case will still be filed. The Company's 60 day Notice of Intent was made roughly 90 days before the date on which it could file the rate case, and the Commission issued a Notice of Application a mere 11 days after the filing, so perhaps the Commission was providing the parties an opportunity to streamline the rate case that would ultimately be filed and conducted.

Regardless, CAPAI questions whether the Commission anticipated that the parties to this proceeding would not simply avoid or narrow issues, but go much further and actually settle a rate case that hadn't yet been filed and propose a general rate increase to the Commission. It seems that the settlement stipulation proposing a general rate increase appears on the surface to have been an abuse of a process for a purpose other than stated in the Notice of Intent, in violation of an existing settlement agreement, in contradiction to the Commission's Notice of Application and Order 32761, and in violation of numerous Commission Procedural Rules.

2. Private Pre-Filing Discussions Seeking Input on Filing.

Paragraph 4 of the "Application of Rocky Mountain Power" states:

> Company representatives have met informally with the majority of its customer representatives including Commission Staff, PacifiCorp Idaho Industrial Customers, Idaho Irrigation Pumpers Association and Monsanto to discuss the concepts of a rate plan that could possibly avoid the necessity and associated expenses for all parties of prosecuting a general rate case.

It was not until sometime after the Commission issued its Notice of Application and Order No. 32761 that CAPAI even became aware that the Company had made its filing and, prior to that filing, had already discussed the substance of it with the Commission Staff and a select group of the Company's largest customer groups. CAPAI, the Idaho Conservation League, and the Snake River Alliance have all been regular intervenors in PacifiCorp filings in recent years but were not listed in paragraph 4 of the Application as having been involved in these pre-

filing discussions. CAPAI certainly had no knowledge that the discussions mentioned by PacifiCorp were even taking place, let alone what they involved.

Thus, the Commission Staff and PacifiCorp's largest Idaho customer groups knew of what procedural plans the Company had in mind at some point in time prior to the filing date of March 1, 2013. Upon inquiring informally of the nature of such plans following March 1, CAPAI was informed that the Company would circulate something in writing prior to the first settlement conference conducted on April 19, 2013. No such document was ever received by CAPAI and it wasn't until April 19 that CAPAI had any idea of what PacifiCorp was actually seeking in this case and what positions had been developed by those parties who were privy to the pre-filing discussions. By that point in time, those parties were already well prepared to begin litigating this case while CAPAI could not seem to get a straight answer as to what the case was even about and how it was possible to have a Notice of Intent simultaneously filed with an Application that purportedly existed only to investigate rate case alternatives and not execute a settlement resulting in a general rate increase.

The Company has never proffered any explanation of why it discussed the substance of its rate case filing with certain regular intervenors but not others. It is very concerning that substantive discussions were held between select groups of customers and the Commission Staff prior to the filing of what was obviously an unprecedented and potentially controversial case and one that has resulted in a proposed rate increase but without proper notice to the public and in violation of existing policy and law. Whether non-Company parties foresaw this scenario, the fact is that PacifiCorp, with the implicit or explicit acquiescence of all those who joined the settlement, has effectively re-written the Commission's Procedural Rules and created an entirely new procedure for processing general rate increases, but without ever defining and first

proposing that new procedure to the Commission for its consideration as, possibly, the Commission anticipated. The new procedure adopted during this case simply seems to be that a utility can file a case that seeks at two mutually exclusive objectives, but the parties can then engage in confidential settlement negotiations resulting in a previously unknown third objective being selected and presented to the Commission for approval. Such a procedure is dangerously abbreviated and negotiated in confidential settlement discussions thereby entirely shutting out the general public on a matter of tremendous importance.

Regardless of whether Procedural Rule 272 prohibits the Commission Staff from engaging in non-noticed and exclusionary pre-filing discussions that ultimately led to a settlement stipulation, the very nature of such private discussions are dangerous and create very real opportunities for abuse of process in the future. Most importantly, it certainly does not instill much faith in a general public who, especially of late, seems increasingly skeptical of its ability to influence Commission decisions. Finally, this matter was simply too important and controversial to allow for private meetings that were not noticed to the public and from which even regular intervenors such as CAPAI were shut out. CAPAI respectfully hopes that the Commission strongly discourage any future filings and conversations of this nature.

III. MOTION TO COMPEL

A. Standards for Motions to Compel

Regarding discovery, the Commission's Procedural Rules operate in conjunction with the Idaho Rules of Civil Procedure. To the extent the latter conflict with the former, the Commission's rules control. Commission Procedural Rule 221 enumerates the general scope of discovery that may be conducted. Rule 222 grants the right to discovery to "all parties to a proceeding." Pursuant to Rule 225, production requests or written interrogatories and requests

for admission "may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, Idaho Rule of Civil Procedure, rule of the Commission, order or notice...." With respect to requests for production/interrogatories, the only exceptions to the foregoing allowable scope of discovery includes discovery used to obtain statements of opinion or policy not previously written or published. *Rule 225(1)(a)-(b).*

CAPAI notes that, historically, parties have adopted the practice of lumping interrogatories and requests for production under the same heading of "production requests." Regarding the general scope of discovery permitted by the Idaho Rules of Civil Procedure, Rule 26(b)(1) thereof provides, in part:

> Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Pursuant to Commission Procedural Rule 221(03), unless otherwise provided by order, notice or the Procedural Rules, a party to whom discovery has been propounded has fourteen (14) days to object or explain why a question cannot be answered according to this rule and twenty-one (21) days to answer. As noted below, the CAPAI discovery subject to this Motion, and to which PacifiCorp has not yet responded, was propounded on April 29, 2013.

In the event that a party refuses to respond to discovery, I.R.C.P. 37(a) provides that the propounding party may file a motion to compel a response to the discovery in question. Rule 37(a)(4) also provides for an award of expenses of the motion to compel in the event it is

granted. Commission Procedural Rule 232 provides that "[t]he Commission may impose all sanctions recognized by the Public Utilities Law for failure to comply with an order compelling discovery.

B. Information Sought by CAPAI and PacifiCorp's Refusal to Respond.

1. Explanation of Data Sought by CAPAI

Since AVISTA's 2012 general rate case, AVU-E-12-08, CAPAI has been making a concerted effort to obtain and analyze low-income consumption data in an attempt to, among other things, obtain a better understanding based on empirical evidence, of how differing rate residential rate design alternatives affect the poor. There is nothing inherently controversial about this objective. To the contrary, it might resolve what have historically been differences of opinion between CAPAI, the utility in question, and other parties. More importantly, it provides the Commission with better information in making its rulings on rate design issues.

The point of seeking low-income consumption data, therefore, is not solely for the purpose of bolstering CAPAI's position on any given issue in a given case, but to edify CAPAI, the Commission, Staff and all others interested in such matters as to how rate design decisions can have a significant impact on the poor.

CAPAI's quest for the data described is, frankly, the result of unsuccessful efforts over the years to obtain low-income data from public utilities. Historically, and for various reasons including privacy concerns, utilities have not identified, gathered, or provided to CAPAI or others certain information related to their low-income customers. CAPAI's pursuit of low-income consumption data, therefore, stems from this lack of effort to obtain such information without violating the privacy of the customers involved.

The manner in which low-income consumption data is sought in this case and has been obtained in other proceedings is generally as follows. First, CAPAI defines low-income

customers in its discovery requests through the use of a "low-income proxy group." This proxy group consists of all recipients of either LIHEAP or utility-funded low-income weatherization, but counts customers who receive multiple benefits only once to avoid double-counting. The utility involved can identify these customers with relative ease and speed and, using their physical addresses, collect their actual consumption data such as how many kilowatt hours are consumed for any given month or season. At no point during this process is the identity of any person for whom consumption data is collected and disseminated by the utility ever revealed.

CAPAI is well aware that the low-income proxy group does not constitute the entirety of any utility's low-income customers as that term is defined for purposes such as qualifying for LIHEAP benefits. It is a virtual certainty that there are far more low-income customers who qualify as such than those who actually seek and obtain benefits. Just the same, the low-income proxy group does reflect low-income consumption characteristics to some extent and is the best data source that CAPAI has thus far conceived that does not violate customers' privacy rights. CAPAI will gladly consider suggestions for ways to improve upon the proxy group, or possibly a different means of obtaining low-income consumption data altogether that any entity wishes to propose, especially the Commission or its Staff.

Once the low-income proxy group data is obtained, the next step is to utilize this consumption data by assessing the impact that varying rate design alternatives would have on low-income customers' bills. This requires what can be characterized by different names such as "model runs" or "bill impact analyses." These functions are not difficult nor unduly time-consuming and have been performed by other utilities such as AVISTA and even PacifiCorp itself in its pending Washington state general rate case.[2] Examples of such model runs would be to make different changes to the various components of whatever existing residential rate design

[2] WUTC Docket No. UE-130043.

the Company has in place and then ascertain how those changes would impact a low-income customer's monthly bills. Incidentally, CAPAI is learning that as these types of model runs are being analyzed, they appear to be revealing information useful not just to low-income customer advocates, but to all residential class customers.

For example, in discovery requests, a utility could be asked to perform a model run where a two-tiered system is replaced with three tiers, the consumption break point by which the tiers are delineated could be changed (e.g., a first tier block could be altered from usage up to 800 kWh/month to 1000 kWh/month), the energy rate pricing within different tiers could be changed (e.g., change from 8 cents/kWh to 9 cents in a given tier), the tiers could be flipped to declining rather than inclining block rates, or the basic charge could be adjusted.

Concerning the Company's basic monthly charge, the discovery requests also will provide empirical information regarding the effects of changes to this rate component on the poor. This is but one example of the type of data sought by CAPAI from PacifiCorp and the benefits that such knowledge brings.

CAPAI has previously sought and obtained from AVISTA the very same information in seeks in this case and which is now subject to this Motion in AVISTA's 2012 general rate case. AVISTA was able to turn around CAPAI's discovery requests within a few days. The information obtained convinced CAPAI to join the settlement stipulation proposed in that case.

More relevant to this Motion to Compel, the very information sought by CAPAI in this case has been sought and obtained from PacifiCorp's Washington utility, Pacific Power & Light in the Company's general rate case pending in that state by the Energy Project which, somewhat like CAPAI, is an umbrella organization that serves Washington's community action agencies. *Docket No. UE*-130043. CAPAI notes that the information provided by PacifiCorp in the

Washington proceeding was sponsored by the same PacifiCorp employee listed as the sponsor to the responses to CAPAI's discovery in this case, Ms. Joelle Steward. Thus, Ms. Steward has already performed the very same model run in Washington that CAPAI seeks in Idaho. Incidentally, the actual data and model run results provided by PacifiCorp in the Washington rate case is of no use to CAPAI because customer consumption varies significantly from region to region and utility to utility (i.e., Pacific Power & Light and Rocky Mountain Power). The Company did not object or refuse to respond to the identical discovery requests in Washington and was able to quickly provide a thorough response.

2. Specifics of CAPAI discovery and PacifiCorp Responses/Refusal to Respond.

The following section outlines the general procedural steps in the discovery process that occurred leading to the current Motion to Compel. As discussed below, CAPAI submitted discovery request Nos. 1-6 to PacifiCorp, with subparts. PacifiCorp has responded to all requests but No. 6(b) which CAPAI considers extremely important. Thus, this Motion to Compel is limited to Request 6(b). Request 6(b) keys off of request 6(a) so the entirety of Request No. 6 is as follows:

> 6. Using the Company's low-income proxy group, and based on actual monthly test year data as referred to in Request No.4, please make the following rate design model runs:
>
> a. Calculate the effects on the low-income customer proxy group's monthly bills if the Company's monthly basic charge were increased from its current level to $10, $15 and to $20, (assuming no changes to the existing commodity rates for the Residential class's two-tiered rate). In responding to this request, please make the requested calculations at existing rates during the test year.
>
> b. Assuming no change to the Company's existing monthly basic charge, calculate the effects on the low-income proxy groups' monthly bills in comparison to non-low income residential customers (using test

> year actual monthly consumption) if the existing two-tiered rate design is changed such that the consumption amount of the first tier is increased from the existing 700 kWh summer block to 800 kWh/month, 1000 kWh and 1200 kWh. Please provide the same data for the winter block of 1000 kWh if the block were changed to 800 kWh, 1200 kWh and 1400 kWh.

Without divulging anything confidential and of substance discussed during the two settlement hearings, it is fair to say that, as early as April 19, 2013, CAPAI made clear its ongoing effort to obtain the type of low-income consumption data described above and obtained from other utilities in other proceedings and that it needed to obtain the same type of data in this case in order to decide whether joining in the settlement was in the best interests of its constituents. It was agreed in this case that, as part of an effort to expedite PacifiCorp's ambitious time frame for obtaining a settlement prior to May 31, 2013, CAPAI could submit its discovery requests in an informal manner to PacifiCorp senior executive Mr. Ted Weston who would attempt to provide a prompt response.

On April 29, 2013, ten days after the conclusion of the first settlement conference, CAPAI submitted its discovery requests Nos. 1-6, with subparts, to PacifiCorp via an email and attachment to that email from CAPAI's legal counsel to Mr. Ted Weston as previously discussed. A true and correct copy of CAPAI's email is included as Exhibit "A" to the Affidavit of Brad M. Purdy (hereinafter referred to as "the Affidavit"), filed contemporaneously herewith. The actual discovery requests attached to the April 29 email as a Word document are included as Exhibit "B" to the Affidavit.

On May 2, 2013, the date of CAPAI's second settlement conference, PacifiCorp responded to CAPAI's discovery requests 1-5 with two separate emails, from Mr. Weston. A true and correct copy of this email is attached to the Affidavit as Exhibit "C." In Exhibit C, Mr. Weston informed the undersigned that the Company was still working on its response to

discovery request No. 6. In the interest of expediency, and because they are not subject to this Motion, the actual discovery responses to CAPAI's request Nos. 1-5 are not attached to the Affidavit.

As the month of May progressed, PacifiCorp drafted and circulated a proposed settlement stipulation seeking comments from the parties. On May 16, 2013, CAPAI, through legal counsel, provided its comments to the proposed settlement stipulation and reminded the Company that it had not yet responded to discovery request No. 6 and that said response was necessary for CAPAI to determine whether the proposed stipulation was acceptable. CAPAI articulated, in no uncertain terms, its ongoing concerns regarding the procedural abnormalities of this case and proposed that a condition precedent to the settlement should be included providing for a formal hearing to allow for public participation in the process. CAPAI never received a response from any party specific to its May 16 email.

On May 29, 2013, PacifiCorp, through its employee Ms. Kaley McNay, emailed its response to CAPAI's discovery request No. 6. A true and correct copy of the email and attached Word document containing the discovery response are attached to the Affidavit as Exhibits "D" and "E," respectively. Though the Company responded to request 6(a). PacifiCorp's response to request 6(b) is as follows:

> The Company has not performed the two-tiered rate designanalysis [*sic*] requested by CAPAI. As specified in paragraph 18 of the Stipulation if CAPAI is party to the Stipulation the Company agrees to participate in a collaborative rate design process to evaluate alternatives.

In the week or so that followed, PacifiCorp continued to refuse to respond to request 6(b) unless and until CAPAI executed a settlement stipulation and only then would a response to the request be provide through an undefined "collaborative effort" or "technical workshop" as Mr. Weston has referred to it. The precise date, location and other logistics of this workshop were

never specified and it is not clear whether CAPAI ever would have received the information it was seeking even had it joined the settlement and the workshop been conducted. Regardless, and as it made clear to the Company and all other parties, CAPAI needed the information sought by request 6(b) before it could determine whether the settlement agreement was in the best interests of its constituents. The promise of yet another "workshop" at some future point in time was not a sufficient response to a legitimate discovery request, especially when it required CAPAI to agree to a rate increase before it had the necessary information, is simply a baseless refusal to respond to legitimate discovery without specifying any particular legal basis for such refusal.

Had CAPAI accepted PacifiCorp's terms, CAPAI would have been barred from challenging the proposed rate increase if the information disclosed by the workshop revealed that the rate increase was not fair, just and reasonable. Thus, CAPAI was effectively forced to relinquish its rights as a party to be entitled to engage in discovery regardless of the fact that the Company did not place similar conditions on the discovery requests of any other party to the best of CAPAI's knowledge. To this day, PacifiCorp has yet to provide a specific legal grounds for its refusal to respond to request 6(b).

C. CAPAI Singled Out by PacifiCorp for Unequal Treatment Depriving CAPAI of its Full Party Rights.

There has been a significant amount of discovery submitted to PacifiCorp by the other parties thoroughly and promptly responded to by the Company. To the best of CAPAI's knowledge, CAPAI is the only party to whom the Company has refused to fully respond to its discovery. CAPAI is also the only party to decline to join in the settlement until such time as the Company provided CAPAI with the information CAPAI needed to decide whether to join in settlement. Up until the very end of May when the Settlement Stipulation was being executed by the other parties, CAPAI was given the distinct

impression on numerous occasions that discovery request 6(b) would be responded to. It wasn't until the end of May when the Company likely had the signatures of all other parties, or the assurance of those signatures, that PacifiCorp reversed its position and refused for the first time to respond to request 6(b). Nonetheless, the Company continued to pressure CAPAI to execute the settlement stipulation despite PacifiCorp's refusal to respond to discovery requests that CAPAI had indicated back in April, 2013 were essential to CAPAI in determining whether to join the settlement.

CAPAI was told that the Company would only respond to request 6(b) if CAPAI joined in the Settlement. This tactic is heavy-handed, and in violation of the Commission's Procedural Rules. Adding this to the unlawful manner in which this case has been handled from the time before it was even filed, the Company has clearly not behaved in a fair and reasonable manner toward CAPAI. To deny CAPAI substantive information that it needs in order to decide whether to even join the settlement is simply taking already bad behavior another step in the wrong direction.

D. PacifiCorp Has Failed to Assert Any Legal Basis for Refusal to Respond

To this day, PacifiCorp has technically not even proffered a legal basis for its objection to CAPAI's request No. 6(b) other than to state that it is not required to perform the model runs requested by CAPAI. The Company does not cite any administrative rules, statutes, case law, or even offer a practical reason why it is not required to respond to CAPAI's discovery. CAPAI is not obligated to speculate what the Company's legal basis is and until such time as it does, CAPAI's Motion should be granted simply because the Company has refused for no stated reason and in bad faith to fairly engage CAPAI and honor its rights as a formal party to this case.

CAPAI notes that requesting utilities to perform model runs or similar analyses is something that parties to proceedings before this Commission have done through discovery requests for at least decades. One example is the common practice of asking a utility to perform cost of service model runs or make other calculations regarding revenue requirement, rate spread, rate design, or any number of other areas involving models. CAPAI's "model" in this case is simply a request to perform basic algebraic calculations of rate impacts resulting from rate design alternatives based on information that only the

Company possesses. Because PacifiCorp is the only entity capable of obtaining the information sought by CAPAI and because said information is sensitive and the privacy of individuals involved must be maintained, and because it is in the best if not only position to perform the model runs requested by CAPAI, any claim that the Company is not required to provide such information is simply inconsistent with historical procedure and the Commission's Procedural Rules and is inconsistent with the fact that AVISTA promptly provided this information to CAPAI and PacifiCorp did so itself in its Washington rate case, though for a different operating division.

IV. SUMMARY OF CAPAI'S CONCERNS AND MOTION TO COMPEL

To summarize, PacifiCorp met in private with Staff and the Company's largest customers prior to filing a manner of proceeding that is unprecedented and defies labeling. It is a rate case, yet it's not. A Notice of Intent to File a General Rate Case was filed, yet it wasn't. It was treated as a general rate case in certain respects, but not in others, yet resulted in a general rate increase that was expeditiously brokered. Technically, an application for a general rate case has not yet even been filed in this proceeding. Assuming the Commission considers the initial pleadings and Notices to have initiated a general rate case, then such pleadings and Notices were a violation of the 2011settlement stipulation because it was filed prior to May 31, 2013. Nonetheless, the parties agreed to a general rate increase prior to May 31, 2013 through confidential settlement negotiations which, apparently, is their proposed "alternative" to a general rate case. The refusal of PacifiCorp to respond to legitimate and relevant discovery requests essential to CAPAI's ability to determine whether to join in this highly questionable settlement is the proverbial insult to injury.

Regarding PacifiCorp's refusal to respond to CAPAI discovery, CAPAI made it clear to the parties early in this proceeding that the information sought by that discovery was essential to CAPAI to determine whether PacifiCorp's existing residential rate design was fair, just and reasonable and, therefore, whether to join in the proposed settlement. Procedural Rule 124 automatically puts at issue matters such as revenue requirement, rate spread, and rate design. CAPAI further notes that during the months that have passed since the discovery was first propounded, especially the past two months when

the matter has sat idle waiting for hearing, the Company had more than ample opportunity to provide the same information that took its Washington division several days to provide. The Company has yet to even offer a legal basis for its refusal to respond to this discovery. CAPAI respectfully submits that this motion could and should be granted on that basis alone.

CAPAI fully acknowledges that this Motion extends well beyond the narrow issue of a typical Motion to Compel, but believes that the refusal of PacifiCorp to respond to CAPAI's discovery is a clear manifestation and symptom of a much larger systemic problem that deserves to be fully addressed in all of its aspects, legal, factual and otherwise. Failure to do so very well might result in very bad precedent being established and a domino effect that will carry the consequences of this case far outside its parameters. Regardless of whether Staff adamantly believes that it has negotiated an end result in terms of a rate increase that is in the best interests of all ratepayers, no such end result is worth establishing the precedent that will be set if the settlement stipulation is approved in this case.

CAPAI has been increasingly concerned about the increased frequency with which general rate cases are being filed and the increasingly abbreviated manner in which they are being processed. CAPAI understands that the Commission's legal authority and powers are limited in terms of discouraging utilities from filing general rate cases. CAPAI is also aware of the substantial demand on Commission resources that nearly annual general rate case filings by Idaho's three largest public electric utilities has had, but this case has followed a path that substantially distances not only the general public from the ability to provide meaningful input to the Commission but parties such as CAPAI as well. If the Commission believes it worthwhile to formally implement a major change to the manner in which general rate cases are handled, then it certainly possesses the legal authority to initiate and engage in an administrative rulemaking procedure for that purpose. To authorize such major change to general rate case procedure through inference and by the approval of an unlawful, *ad hoc*, confidential, and hastily-conceived process and product such as the proposed settlement stipulation in this case is not something the Commission must accept. Public perception does matter and the process employed in arriving at the

pending rate case settlement, regardless of how favorable it might be to ratepayers, is certainly not going to bolster public confidence in the ratemaking process.

V. CONCLUSION

CAPAI respectfully requests that PacifiCorp be required to respond fully and in good faith to CAPAI's discovery request No. 6(b).

DATED, this 30th day of July, 2013

Brad M. Purdy
Attorney for Community Partnership Association of Idaho

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 30th day of July, 2013, I served a copy of the foregoing document on the following by electronic mail and U.S. Postage, first class.

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